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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/069,278	06/11/2002	Helmut Brehm	5003073-026US1	7874

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EXAMINER

ASINOVSKY, OLGA

ART UNIT	PAPER NUMBER
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1711

DATE MAILED: 06/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/069,278

Applicant(s)

BREHM ET AL.

Examiner

Olga Asinovsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3,5-15 and 17-26 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 26 is/are allowed.
- 6) ☒ Claim(s) 1-3,5-15 and 17-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Continued Prosecution Application

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 03/22/2004 has been entered.

The preliminary amendment filed 03/22/2004 after final rejection does not introduce new matter. The new claims 25 and 26 of this amendment have support in the original filed claim 4.

Claim Rejections - 35 USC § 112

2. Claims 1 and 13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The recitation "the parameter" for a polymer composition in claim 1 and a process in claim 13 renders claims 1 and 13 indefinite. It is not clear whether the term "the parameter" is referring to the ingredients of the composition or the process conditions in the continuous polymerization process. And, how "the parameter" will effect on the characteristics of a powdered composition and a process of making a said composition. It is not clear what Applicants intend thereby.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 6-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Dahmen et al U.S. Patent 5,712,316.

Dahmen had been considered in the previously office action. Dahmen discloses a powder-form crosslinked polymer capable of absorbing aqueous liquids and body fluids. The chemical ingredients for formulation a said composition and the contents of the ingredients are within the ranges specified in the present claim 1. The powdery polymer can be produced by continuous polymerization process. Dahmen discloses "the polymers may be manufactured on the large scale by continuous or discontinuous process", column 6, lines 15-17. The continuous polymerization process is inherently included adding at least one component continuously. The desired properties are depending on the temperature and the residence time, and the kind of reactant, column 6, lines 7-8. Therefore, Dahmen discloses a continuous polymerization process wherein at least one parameter can be varied during the process of producing a polymer composition. The statement "wherein a parameter of the continuous polymerization process is varied by increasing and decreasing the parameter in a recurring pattern, during the polymerization process" is inherent in a continuous polymerization process in

Dahmen. The term "the parameter" could be referring to adding at least one component to the reaction process under a continuous polymerization process or at least one parameter of the process condition such as a temperature and residence time.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-3, 5-15 and 17-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dahmen et al U.S. Patent 5,712,316

7. All discussions in the paragraph 4 above are adequately set here. Any additional component such as a blowing agent can be expected in the present claims as a non-reactive component.

8. The difference between the present claims and Dahmen is the requirement in the present claims wherein the powdered crosslinked polymer composition is made by continuous polymerization process "wherein a parameter of the continuous polymerization process is varied by increasing and decreasing the parameter in a recurring pattern, during the polymerization process." Also, Dahmen does not disclose that the polymerization is effected on a moving support for the present claims 5 and 17. The term "parameter" could be considered as a process condition parameter such as a temperature, residence time, and measured quantities of the ingredients or adding at

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least one component to the reaction process under a continuous polymerization process. Dahmen discloses a continuous polymerization process, column 6, lines 5-17. It would have been obvious to one of ordinary skill in the art to select at least one parameter such as adding at least one reactive component continuously under a continuous polymerization process in Dahmen's invention because Dahmen discloses a continuous or discontinuous polymerization process, column 6, line 15. It would have been obvious to one of ordinary skill in the art to select at least one "parameter" of the continuous polymerization process in Dahmen's invention by using a suitable mixer having a moving support since different types of mixers can be used within the same expectation of obtaining the adequate results, column 5, lines 66-67. The motivation is that it is within the skill of one in the art to use a continuous polymerization process for producing a powdered composition in Dahmen's invention wherein at least one parameter can be added continuously wherein a said parameter is referring to the component of the composition or a parameter is a process condition for making a powdered composition wherein a said parameter can be changed during a process polymerization.

Allowable Subject Matter

9. The following is a statement of reasons for the indication of allowable subject matter: Claim 26 is a process claim. Wherein the continuous polymerization process is varied by increasing and decreasing "the parameter" in a recurring pattern, during the

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polymerization process, wherein "the parameter" is selected from the group consisting of the specified components in claim 26.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Olga Asinovsky whose telephone number is 571-272-1066. The examiner can normally be reached on 9:00 to 5:30 pm.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Olga Asinovsky
Examiner
Art Unit 1711

O.A.

O.A.
May 28, 2004


James J. Seidleck
Supervisory Patent Examiner
Technology Center 1700